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THE CORONAVIRUS PANDEMIC IN KASHMIR: POSSIBLY A NEW TOOL OF VIOLENCE BY INDIA

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Abstract

The outbreak of Coronavirus COVID-19 is a large task for human beings as well as their governments. This paper is a focusing tool for the prediction of violence vis-a-vis Coronavirus infection in the valley of Kashmir. The Coronavirus (COVID-19) is a novel virus that can infect animals as well as humans, can cause series of respiratory sicknesses from the common cold to lung lesions, and pneumonia that can possibly lead to death. World Health Organization (WHO), labeled it a pandemic as it spreads very easily from person to person, especially within hospitals, homes, and confined places. More than 7,741,000² cases are reported in 204 countries of the world causing more than 400,000 deaths. The main purpose of this study was to analyze the situation of the pandemic in Indian-held Kashmir (IHK) and to analyze the violence it causes impacts on the future of Kashmir. The paper concludes that the detection procedures/process of violations and method of screening should always be précised and transparent to avoid a misconception among the communities. The international media and independent sources should be allowed to monitor and review the situation in Kashmir in comparison with WHO guidelines, issued from time to time and make findings and recommendations accordingly.

Keywords: Epidemic, pandemic, COVID-19, violence in Kashmir, Kashmir valley, quarantine, lockdown, citizenship act, IOK, POK, IHK.

Introduction

Kashmir, being the greatest threat to the security and peace in the region of South Asia (Naz, 2019), experienced the ongoing lockdown, in continuous existence since August 2019. This lockdown has been deliberately imposed upon Jammu and Kashmir after an amendment to the constitution that changes the existing position of

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² as of June 13, 2020

IOK³ followed by a recent biased Anti- Muslim citizenship act. The same consecutive deliberate acts on part of the Indian government will lead to a new wave of violence in IOK, once the so-called lockdown is lifted. There is a fear of blood bath in the valley sooner or later as already being told by Pakistani PM Imran Khan during his speech to the Annual UN General Assembly session held in 2019.

Now the situation was over trapped by the ongoing pandemic and India has gained the benefit to hide the real issue behind the scenes. The people are in a difficult situation and want an urgent remedy to get rid of the ongoing lockdown which had not only held for the Corona pandemic but for other deliberations. However, official statements from India also confirm the fact that strict military measures are taken up to ensure "anti-terrorist operations" which are based on information provided by the locals. This is assumed thus that the Kashmiris are themselves fed up with militancy and want peace to return to Jammu and Kashmir (News18, 2020a; UNHCR, 1990).

The earliest precedent of quarantine law dates back to 1824 in *Gibbons v. Ogden* ruling of the full bench of the United States Supreme Court (*Gibbons v. Ogden*, 1824). The Indian Penal Code, 1860 contains provisions on public health and safety to deal with quarantine enforcement. The Epidemic Diseases Act, 1897 as a special law is applied to the containment of epidemics like cholera, malaria, dengue, swine flu, and COVID-19 in India. The nation-wide lockdown uniquely added the Disaster Management Act, 2005, for the preventive strategy of the COVID19, the Coronavirus, named for the crown-like spikes that protrude from the virus surface and can infect both animals and humans (Nasser & Elshafiye, 2020). It is an emerging respiratory disease and was first detected in December 2019 in a seafood market in Wuhan city, Hubei province of China. The disease is contagious, and its main symptoms include fever, dry cough, fatigue, myalgia⁴, and dyspnea⁵ having a high mortality rate. China's health authorities and CDC promptly identified the pathogen of a new type of Coronavirus, which the World Health Organization (WHO) named COVID-19 on January 10, 2020 (Effiong et al., 2020; Elabiyi & Adenola, 2020; Jacob, 2020; Jacob et al., 2020; Maneesh & Alaoui, 2020; Narware, 2020; Nasir & Khan, 2020; Singh & Singh, 2020).

The World Health Organization (WHO), labeled Coronavirus disease (COVID-19) as a pandemic which caused so far more than 400,000 deaths worldwide.⁶ The common law remedies for quarantine enforcement have been one of the classical and effective legal options to be exercised by a state in times of epidemic and pandemic. In this study, various publications from different sources of Kashmir valley were selected from January to May 2020.

³ Indian occupied Kashmir

⁴ Pain in a muscle or group of muscles

⁵ Shortness of breath, uncomfortable and abnormal breathing

⁶ As of June 2020

The paper takes a legal stance on the quarantine law enforcement in sanctioning the lockdown and social distancing rule in the light ruling of Federal Court of San Francisco in *Jew Ho versus Williamson* and Indian Supreme Court decisions in *Municipal Council Ratlam versus Vardichand* and *Alakh Alok Srivastava versus Union of India* to meet the contemporary challenges posed by the COVID-19 pandemic in India. The earliest precedent of the enforcement of quarantine law and the power of the states in adopting stringent measures for public health protection dates back to 1824. It is chronicled in *Gibbons versus Ogden* (*Gibbons v. Ogden*, 1824) by the decision of the United States Supreme Court endorsed by Chief Justice John Marshall (Herbert, 2010). Since then the powers of a state to act out quarantine laws and to enforce health regulations are considered justified the world over for any health emergencies, contagious diseases, and virus infections (Thomas, 2008).

Analysis

The Indian Penal Code, 1860 is one of the earliest legislation of the country containing provisions relating to offenses upsetting the public health safety convenience, decorum, and ethics. This can be split into two major parts: the one dealing with the public trouble and the other dealing with the quarantine laws (Indian Penal Code, 1860). There prevails always a fear of possible resistance by the movement of freedom of Kashmir (Ali & Saeed, 2019) so the government of India to obtain maximum grip over the valley behind the lockdown, maybe possibly hiding the actual situation. The Military was actually deployed and the quarantine laws were imposed on the valley to maintain law and order during an amendment in the constitution for the change the existing position of IOK. The Indian government's coercion and the use of force took an alarming turn on August 5, 2019, when in an attempt to legally validate its occupation in Kashmir, it scrapped Articles 35 A and Article 370 of its constitution, which earlier granted special status to Kashmir. The move took place amid an unspecified lockdown and deployment of additional troops in the region. According to Article 49 of the fourth Geneva Convention, the occupying force cannot deport or transfer part of its civilian population into the territory that it occupies. The revocation of Article 35 A and 370 is rooted in the BJP's longstanding agenda of making Muslims a minority in the occupied territory by altering the demography of the region. This move to eradicate the special status of Kashmir and Kashmiris has created a shift in the demography of the valley and ultimately render Muslims second-class citizens in a region that is home to more than 7 M Muslims.

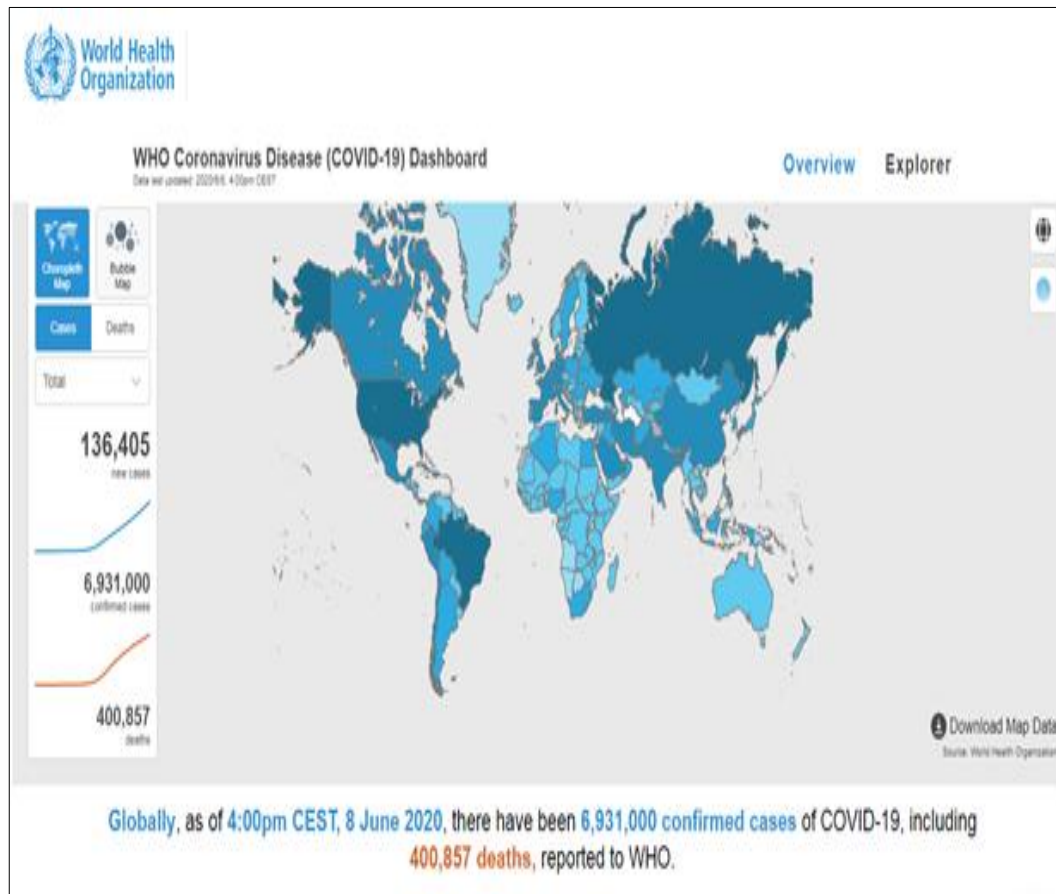


Figure 1: WHO statistic for Coronavirus (WHO, 2020)

Article 370 of the Indian Constitution, came into effect in 1949 and exempted the State of Jammu and Kashmir from India. In addition Article 35 A was imposed by presidential order in 1954, which allowed the local legislature in IOK to prohibit outsiders from a permanent settlement or buying land in the region. Since India has repealed the special status of Kashmir and Kashmiris, all Indians now have the right to purchase property in Jammu and Kashmir and make moves for permanent settlement in the region. Revoking the special status of Kashmir has also paved the way for the Indian military to not only enhance its scale of operations in Kashmir but also expand its influence in the region with the additional deployment of troops in the region. Even before coming into power, the BJP leadership had been vocal about its agenda of setting up colonies to permanently settle Indian soldiers and build townships to settle displaced Kashmiri Pandits in IOK. With the abrogation of Article 370 and 35A, the demographic transformation of the region from a Muslim-majority to a Hindu-majority may well become a reality, with the support of the BJP's ideology of Hindu nationalism inspired by RSS⁷(Wani & Desai, 2018).

⁷ RashriaSawek Singh – An extremist organization of India promoting Hindu supremacy

The abrogation of Articles 35 A and 370 which in other words means to pave the way for Hindu migration and settlement in IOK, is a human rights violation against Kashmiri Muslims. Communal violence will undoubtedly increase with the Kashmiris expressing their dissent over the illegal Indian annexation over Jammu & Kashmir. The move of the Indian government to revoke IOK's special state status is not only aimed at boosting its hegemony over the region, but it also is rooted in its plans of carrying out genocide and ethnic cleansing of Muslims in Kashmir, a warning for which has already been released as "ethnic, religious and racial cleansing of Kashmiri Muslims by the Indian military" (Genocide Watch, 2020). It has highlighted the stages of genocide that are evident in Kashmir. The outright discrimination of Kashmiri Muslims and the classification of Hindus along with the Sikh Indian army versus Kashmiri Muslim civilians has led to division and incited anti-Muslim hatred in IOK. Moreover, the process of dehumanizing Muslims whereby they are labeled as "terrorists" has also contributed towards discrimination – regarded as a warning and a signal for a possible genocide. Furthermore, the endorsement of such labels by Indian Prime Minister Modi and BJP officials, aimed at delegitimizing the Kashmiri movement for freedom by equating it with the rhetoric of Islamic terrorism, not only instigates anti-Muslim rhetoric in IOK but also leads towards polarization within the region. This deteriorated situation viz a viz with the current pandemic situation creates an imbalance between the provision of health care services and maintaining the so-called law & order (UNHR, 2016; Wani & Desai, 2018; Genocide Watch, 2020).

Smart lockdown is beneficial in stimulating the corona infection in numerous stages and to reduce the violence in the valley of Kashmir but at the same time, it can fasten the military grip of India over Kashmir resulting in extended human rights violations. The majority of Muslim led population has a deep grievance over the racist based lockdown in the valley. In response, the world must recognize the dangers of rising Hindu nationalism in India, which is not only a threat to the already locked down Kashmiris, but also to the political dynamics of the region. There need to be substantive discussions of the UN reports and the international community should pressurize the government of India to take the findings and the recommendations of the independent human rights violation report seriously, and agree to institute a Commission of Inquiry to access and address the human right's violations in IOK. Furthermore, with regards to the abrogation of Article 35 A and 370, there should be a greater emphasis on the fact that this move by India constitutes a war crime as it violates Article 49 of the Fourth Geneva Convention according to which forcible transfers of the civilian population from and within an occupied territory are prohibited, including the transfers of the population from India into the occupied territory of Kashmir.

| COVID-19 UPDATE | | | | | | | | | |
|-----------------|-----------------|--------------|---------------|--------------|-------------|--------------|-------------|------------|----------|
| MAY 31 | TOTAL | +/- | RECOVERED | +/- | RR % | DEATHS | +/- | MR % | Rank |
| INDIA | 1,82,143 | +8380 | 86,983 | +4614 | 47.8 | 5,164 | +193 | 2.8 | 9 |
| A&N Is | 33 | 0 | 33 | 0 | 100.0 | 0 | 0 | 0.0 | 30 |
| Andhra P | 3,569 | +133 | 2,289 | +63 | 64.1 | 60 | 0 | 1.7 | 10 |
| Arunachal | 4 | +1 | 1 | 0 | 25.0 | 0 | 0 | 0.0 | 32 |
| Assam | 1,185 | +161 | 163 | +38 | 13.8 | 4 | 0 | 0.3 | 18 |
| Bihar | 3,636 | +260 | 1,618 | +407 | 44.5 | 20 | +5 | 0.6 | 9 |
| Chan'garh | 289 | 0 | 189 | 0 | 65.4 | 4 | 0 | 1.4 | 23 |
| Chha'garh | 447 | +32 | 102 | +2 | 22.8 | 1 | 0 | 0.2 | 21 |
| Dadra&NH | 2 | 0 | 0 | 0 | 0.0 | 0 | 0 | 0.0 | 33 |
| Delhi | 18,549 | +1163 | 8,075 | +229 | 43.5 | 416 | +18 | 2.2 | 3 |
| Goa | 70 | +1 | 41 | 0 | 58.6 | 0 | 0 | 0.0 | 26 |
| Gujarat | 16,343 | +409 | 9,230 | +619 | 56.5 | 1,007 | +27 | 6.2 | 4 |
| Haryana | 1,923 | +202 | 971 | +31 | 50.5 | 20 | +1 | 1.0 | 15 |
| Himachal | 313 | +18 | 111 | +24 | 35.5 | 5 | 0 | 1.6 | 22 |
| J&K | 2,341 | +177 | 908 | +33 | 38.8 | 28 | 0 | 1.2 | 13 |
| Jharkhand | 563 | +52 | 256 | +40 | 45.5 | 5 | 0 | 0.9 | 20 |
| Karnataka | 2,922 | +141 | 997 | +103 | 34.1 | 48 | 0 | 1.6 | 11 |
| Kerala | 1,208 | +58 | 575 | +10 | 47.6 | 9 | +1 | 0.7 | 17 |
| Ladakh | 74 | 0 | 43 | 0 | 58.1 | 0 | 0 | 0.0 | 25 |
| Madhya P | 7,891 | +246 | 4,444 | +175 | 56.3 | 343 | +9 | 4.3 | 6 |
| M'rashtra | 65,168 | +2940 | 28,081 | +1084 | 43.1 | 2,197 | +99 | 3.4 | 1 |
| Manipur | 62 | +3 | 8 | 0 | 12.9 | 0 | 0 | 0.0 | 27 |
| Meghalaya | 27 | 0 | 12 | 0 | 44.4 | 1 | 0 | 3.7 | 31 |
| Mizoram | 1 | 0 | 1 | 0 | 100.0 | 0 | 0 | 0.0 | 34 |
| Nagaland | 36 | +11 | 0 | 0 | 0.0 | 0 | 0 | 0.0 | 29 |
| Odisha | 1,819 | +96 | 1,050 | +163 | 57.7 | 7 | 0 | 0.4 | 16 |
| P'cherry | 51 | 0 | 14 | 0 | 27.5 | 0 | 0 | 0.0 | 28 |
| Punjab | 2,233 | +36 | 1,967 | +18 | 88.1 | 44 | +2 | 2.0 | 14 |
| Rajasthan | 8,617 | +252 | 5,739 | +495 | 66.6 | 193 | +9 | 2.2 | 5 |
| Sikkim | 1 | 0 | 0 | 0 | 0.0 | 0 | 0 | 0.0 | 34 |
| Tamil Nadu | 21,184 | +938 | 12,000 | +687 | 56.6 | 160 | +6 | 0.8 | 2 |
| Telangana | 2,499 | +74 | 1,412 | +31 | 56.5 | 77 | +6 | 3.1 | 12 |
| Tripura | 268 | +17 | 172 | +1 | 64.2 | 0 | 0 | 0.0 | 24 |
| Utt'khand | 749 | +33 | 102 | 0 | 13.6 | 5 | 0 | 0.7 | 19 |
| Uttar Prad | 7,445 | +161 | 4,410 | +166 | 59.2 | 201 | +3 | 2.7 | 7 |
| W Bengal | 5,130 | +317 | 1,970 | +195 | 38.4 | 309 | +7 | 6.0 | 8 |

Recovery Rate (RR) and Mortality Rate (MR) is percentage over total cases
Change over 24 hours. Rank is based on total cases
Source: Ministry of Health & Family Welfare, Govt. of India
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Figure 2: Corona Virus situation updates of India (News18, 2020b).

The data in Figure 2 shows the overall state of the Covid-19 situation in the valley (News18, 2020b). The detection procedures/process and method of screening should always be précised and transparent to avoid a misconception among any community (ICISS, 2011; Iqbal, 2019). The international media and independent sources should be allowed to monitor and review the situation in comparison with WHO guidelines, issued from time to time and make findings and recommendations accordingly.

Conclusion

The Ultra-nationalists in India have strategically chosen Kashmiris as their target to inflate their power and materialize their goal of making India a Hindu state. In response, the world must recognize the dangers of rising Hindu nationalism in India, which is not only a threat to Kashmiris but also to the political dynamics of the region. Furthermore, with regards to the abrogation of Article 35 A and 370, there should be greater emphasis on the fact that this move by India constitutes a war crime as it violates Article 49 of the Fourth Geneva Convention according to which forcible transfers of the civilian population from and within an occupied territory are prohibited, including the transfers of the population from India into the occupied territory of Kashmir. Moreover, even though the position of the permanent five members of UNSC is of utmost importance with regards to Kashmir, platforms such as the OIC could also prove significant in building the case for Kashmir, highlighting it in the international arena, and pressurizing India to get an end to the predicament of Kashmiris. The Indian government's move to revoke IOK's special status is not only aimed at boosting its hegemony over the region, but it also is rooted in its plans of carrying out genocide and ethnic cleansing of Muslims in Kashmir. Genocide Watch has released warnings of the genocide of Kashmiri Muslims by the Indian military and has highlighted the stages of genocide that are evident in Kashmir. Kashmiris are already facing strict lockdown because of their agitation over revoking the special status of the state. In such a condition this genocide may turn into a reality making COVID -19 a new tool to enhance Indian Military operations in Kashmir resulting in human rights violations.

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